of applying to review, or appealing against, the order made by Russell J. on the 20th September, 1948. It is not for me to speculate in this judgment what course the appellant would have taken if the Registrar of Titles had registered, as he should have done, the order of Russell J. — an order to which the appellant had not objected.

Mr. Griffith Jones, Legal Adviser, Selangor, for the first respondent, the Registrar of Titles, Selangor, and Mr. Mills, for the second respondent, the Hongkong and Shanghai Banking Corporation Limited, appeared on the hearing of this appeal and associated themselves with the arguments of Mr. Ramani, for the appellant, against the judgment of Briggs J.

I agree with the judgment of Briggs J., except that part of it which decides that the order of Russell J. has the effect of reviving, renewing or continuing the caveat. I do not think that his opinion in this respect was necessary to his decision upon the question asked in the Reference by the Registrar of Titles — i.e. whether the charge presented on the 23rd October 1948 ought to be registered. I content myself with deciding that once the memorial of Russell J.'s order had been made on the register document of title it had the effect of forbidding any instrument from being registered against the title until judgment in Civil Suit No. 101/1948 or until further order of Court. I would therefore vary the order of Briggs J. by deleting therefrom the first declaration therein.

One final matter which I ought to mention, though it is not necessary to decide in this appeal. It is that we were informed by Mr. Griffith Jones that it is not the practice for the Registrar of Titles, Selangor, to note any order of Court in the presentation book, when it is presented for registration.

Section 78 of the Land Code reads :—

> The proper registering authority in making a memorial in the Register or a reference on an instrument shall take the time and date in the presentation book as the time and date of registration.

That section is not restricted to "instruments" mentioned in the Land Code — I do not consider that an order of Court is an instrument — it refers to *all* memorials. In view of that section all orders of Court should be noted on the presentation book, otherwise there is no record of the time and date when they were presented. To ignore the provisions of section 78 with regard to orders of Court might lead to grave difficulties if an order of Court and a charge or transfer were presented on the same day at about the same time.

Accordingly I would dismiss this appeal, vary the order of Briggs J. as stated, and reserve the question of costs for further argument.

On further argument regarding costs, Mr. Hastings, for the third respondent, specifically asked for costs against the appellant but not against the first and second respondents. Mr. Ramani, for the appellant, in reply, did not ask that the first and second respondents should be made jointly liable with the appellant for the costs of the third respondent — he contented himself with submitting that since the judgment of the Court below had been slightly varied, though still upheld, the appellant should only pay to the third respondent one-half of the taxed costs.

Having taken a short time to consider this matter we reject the submission that the appellant should only be liable to pay the third respondent one-half of the taxed costs, and since the third respondent did not specifically ask for costs against the first and second respondents, we order that the third respondent's costs of this appeal shall be paid by the appellant.

Appeal dismissed.

KANDIAH v. PONNIAH PILLAY & ANOR.

[A. C. J. (Storr J.) January 17, 1949]

[Ipoh — Civil Appeal No. 13 of 1948]

Practice — Civil Procedure Code (Cap. 7), s. 299 — Application for release of property attached — Consent of both parties necessary before application can be heard by Court.

In this case an application was made for the release of certain property attached by the District Court in a Civil Suit. The decree-holder was called before the Court to show cause why the property should not be released. The decree-holder appeared before the Court and consented to the matter being dealt with under s. 299(ii) but the objector-appellant asked for an adjournment to call a witness. The learned District Judge refused postponement and proceeded to dispose of the matter. The objector appealed.

Held: as both parties had not consented to the matter being disposed of forthwith under s. 299(ii) of the Civil Procedure Code, the learned District Judge had no power to dispose of the matter as he did, and therefore his Order must be set aside.

CIVIL APPEAL.

S. M. Sharma for the appellant.

S. K. Das for the 1st respondent.

2nd respondent in person.

Storr J. : — This was an appeal from the Judgment and Order of the District Judge, Perak South, on an application under section 298, Civil Procedure Code, for the release of property attached in Telok Anson District Court Civil Suit No. 7 of 1948.

Mr. Sharma appeared for the appellant (objector) and Mr. S. K. Das for the 1st respondent (decree-holder). The 2nd respondent appeared in person but took no part in the argument.

The ground of appeal relied on by Mr. Sharma was that the learned District Judge had not proceeded in accordance with section 299 sub-sections (ii) and (iv), Civil Procedure Code, in that before hearing the parties who appeared before him he failed to ascertain that they consented to the matter being disposed of by him forthwith. Mr. S. K. Das, who appeared for the 1st respondent, argued that a letter from Mr. Sharma asking for a postponement of the application, and the fact that before the learned District Judge the appellant also asked for a postponement amounted to an implied consent to the application being heard in accordance with section 299(ii). He cited various authorities none of which appeared to bear on the point in issue in the appeal.

The procedure as laid down in the Civil Procedure Code after an application under section 298 has been filed is set out fully in section 299, which reads as follows :—

299. (i) The Court on receiving an application for the release of any property shall issue a notice to the decree-holder requiring him to appear and show cause why the property should not be released.

(ii) If on appearance before the Court both parties consent thereto the Court may proceed to dispose of the matter forthwith and may make an order disallowing the claim or releasing the property from attachment wholly or to such extent as it thinks fit.

(iii) A party who has given his consent under sub-section (ii) shall not be permitted to retract such consent, but an appeal shall lie against any order made.

(iv) If both parties do not consent to the matter being disposed of as provided in sub-section (ii) the Court shall refuse to make any order on the merits of the application but either party may institute a suit to establish the right which he claims to the property attached.

(v) The Court may allow the whole or any part of the property attached to be released upon security being given to the satisfaction of the Court for the return to the custody of the Court of any property so released, or may order it to be sold and the proceeds lodged in Court pending the decision of such suit, or may order the property to remain under attachment until the further order of the Court.

(vi) If no suit has been instituted within one month from the date on which the Court has under sub-section (iv) refused to make an order the application shall be deemed to be dismissed.

It seems clear from the words of section 299(i) that on receiving the application the decree-holder is called before the Court to show cause why the property should not be released. If he appears before the Court to show cause and the objector is present, then the provisions of section 299(ii), which make the consent of *both* parties a condition precedent to the Court disposing of the matter forthwith, apply and that, in my opinion, puts a duty on the Court to ascertain whether or not the parties consent to the Court disposing of the matter forthwith before proceeding further. In the present case, it is very apparent from the record that the learned District Judge did not ask the (objector) appellant if he consented to the Court disposing of the matter forthwith. In fact he proceeded to deal with the matter, as far as the (objector) appellant was concerned, as follows :—

Letter from Mr. S. M. Sharma is read.

I read affidavit of Kandiah.

I ask Objector: How is it that you say the cattle under attachment are all yours when 3 persons swore the cattle were all theirs last time I was here?

Objector: I do not know.

Mr. Bhaduri: I do consent to the matter being dealt with at once under s. 299(ii). I object to an adjournment. The objector has had ample time to make out his case since 28th August. The original distress took place on the 18th August. The witnesses have been subpoenaed and are in fact in Court, so I understand.

Objector: I want an adjournment as my witness Bahauthali s/o Abdullah has not been served.

I ask Objector: Where is the witness?

I have no idea as to his whereabouts.

I say: How do you expect to serve the subpoena if you don't know where he lives, or where his whereabouts are?

Postponement is refused.

From the above it is quite clear that the District Judge by his unfortunate question to the (objector) appellant showed that before hearing him he doubted the *bona fides* of his claim, and then, instead of asking if he consented to the matter being disposed of forthwith, refused his application for an adjournment, which was tantamount to objecting to the application being taken forthwith, and more or less forced him to proceed at once.

If *both* parties do not consent to the matter being disposed of forthwith, then the procedure outlined in sub-sections (iv), (v) and (vi) of section 299, Civil Procedure Code, applies.

In this case it is clear the learned District Judge did not follow the procedure as laid down in section 299 sub-sections (ii) and (iv), Civil Procedure Code, and he therefore must be taken to have acted without the necessary consent of both parties at the time the matter was disposed of by him. He therefore acted in contravention of the express provision of section 299(iv), Civil Procedure Code.

The appeal is allowed and the Order of the District Judge set aside. As the whole matter before the District Judge in question appears to have been dealt with in a very unsatisfactory manner, I order the matter be referred back to the District Judge, now President of Sessions Court, Perak South, so that it can be dealt with in accordance with the provisions of the Civil Procedure Code. In the circumstances of this case, in which neither party is to blame for the necessity of the appeal, I make no order as to costs here or in the Court below.

Appeal allowed.

Solicitors : *S. M. Sharma; Das & Co.*